

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE

6 2005



WILLIE JONES,

Petitioner,

-against-

BRIAN FISCHER, Superintendent,

Respondent.

05 CV 24 (ARR)

NOT FOR
PUBLICATION

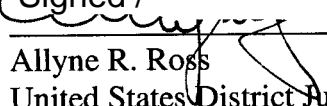
OPINION AND ORDER

ROSS, United States District Judge:

The pro se petitioner Willie Jones ("Jones" or "petitioner") filed the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on December 27, 2004. Jones' petition raises two claims: (1) that he was denied his right to a fair trial because the trial court precluded defense counsel from arguing in summation "the only viable theory of defense," and (2) that he was denied the effective assistance of trial counsel for counsel's purported failure to seek the transfer of the case to family court, to pursue a defense of lack of responsibility, to argue against the imposition of consecutive sentences, and because counsel's performance was generally deficient. While petitioner raised the first claim on appeal, he has never presented an ineffective assistance claim in the state courts. As a result, Jones has submitted a mixed petition. As respondent concedes, petitioner may still be able to exhaust some of his ineffective assistance claims in state court. By letter dated April 28, 2005, petitioner appears to ask the court to stay the petition so that he may exhaust those claims. Pursuant to Rhines v. Weber, 125 S.Ct. 1528 (2005), the court hereby stays the instant petition for a writ of habeas

corpus so that petitioner may seek to exhaust his ineffective assistance claims in the state court by way of a section 440 motion. The stay is conditioned on the fact that petitioner pursue his state court remedies within thirty days of the date of this order and that he return to federal court to proceed with his petition for a writ of habeas corpus within 30 days of exhausting his ineffective assistance claim. Zarvela v. Artuz, 254 F.3d 374, 381 (2d Cir. 2001). Petitioner is advised that he may be barred from proceeding in this court if, having been denied relief in state court, he delays in seeking to reopen these proceedings.

SO ORDERED.

Signed /

Allyne R. Ross
United States District Judge

Dated: May 13, 2005
Brooklyn, New York

SERVICE LIST:

Pro Se Petitioner

Willie Jones

04-A-2876

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